IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 49 of 2004

LAJWANTI
V/S
MELA SINGH & ORS

Mr. SL JAIN, for the appellant / petitioner

Mr. NR CHOUDHARY, for the respondent

Date of Order : 1.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel of the appellant and perused the impugned judgments of the two learned courts below.

It was contended by the learned counsel for the appellant, that the agreements in question are of the years 1979, 1981 and 1985, while even in the pleadings contained in the para-4 of the plaint, the plaintiff has himself admitted, that the requirement of obtaining previous consent was done away with on 22.04.1991, still the suit has been filed on 11.08.1995, which was clearly barred by time, and both the learned courts below have erred in deciding the issue no. 9, framed in this regard, against the appellant. The other submission made is, that Section 13 (1) of the Rajasthan Colonization Act prohibits transfer of the land, without previous written consent, while in the

present case, admittedly consent has been obtained, and therefore, the transfer is void, and no decree could be passed, as done by the learned courts below.

I have considered the submissions, and have closely perused the record, as has been requisitioned.

In para-4 of the plaint the plaintiff has pleaded, that the sale-deed could be executed without any delay after the condition of previous consent is withdrawn, but the defendant has entertained dishonesty, wants to avoid, and wants to sale the land to other persons, therefore, the suit is being filed. Then in para-5 it is pleaded, that the plaintiff time and again requested the defendant to procure necessary papers, and get the sale executed, but he avoided, and four days ago he finally declined, and started making search of other customers. In para-4 of the written statement the defendant has admitted, that document could be executed without any delay after withdrawal of the condition of the previous consent, and that the condition had been withdrawn since 22.04.1991, still the plaintiff did not take any steps, nor had shown readiness to get the sale deed executed, so much so that even notice was not given to the deceased Vazeer Chand, thus, suit is barred by time. Then replying para-5 of the plaint, all that has been pleaded is, that the averments are wrong and no cause of action arises to the plaintiff. Thus, the suit is filed

without any cause of action.

The learned trial court has found, that burden of proving issue no. 9 was on the defendant, and defendant has not led any evidence to prove the issue, nor has shown any legal authority, even during course of arguments, as to how the suit is barred by time. Then learned lower appellate court has found, that from perusal of the agreements it is clear, that no time was stipulated for performance, and therefore, the limitation would start running from the date of refusal by the defendants, and the trial court has rightly found, that defendant has failed to prove the issue.

During course of arguments learned counsel for the appellant pointed out, that the notification withdrawing the condition w.e.f. 22.04.1991 was published in the gazette in the year 2004. Then the learned counsel could not point out, from reading of the agreements, that any time was stipulated for performance of the contract, and after myself reading the agreement, I find, that in the agreement Ex. 2 though time was fixed, but then in the agreement Ex. 3 this condition was given go-bye, and it was stipulated, that the sale deed would be executed and registered after 30 days of receiving the consent, and it will be the responsibility of the defendant, to intimate to the plaintiff about having received the consent.

Admittedly, it is nowhere the case of appellant either, that the consent of the competent authority had been obtained, or that any information was given to the plaintiff, about the requirement of the consent having been withdrawn. That apart, apart from the fact, that the defendant has not led any evidence in regard to any of the factual aspects, which could substantiate issue no. 9 in favour of the defendant, no facts have been put to the plaintiff, in the cross examination, the fact as to whether plaintiff have known about the condition of the consent having been withdrawn, or about his having been intimated, or about refusal to execute the sale deed be more than 3 years prior to the filing of the suit, or the like. In these circumstances, it cannot be said, that learned courts below were in error in deciding the issue of limitation against the appellant.

Then so far as the condition on the anvil of Section 13 (1) is concerned, in the present case the decree passed is, to execute the sale deed after obtaining all necessary permissions, and completing the formalities, and mere execution of agreement cannot be said to be violative of Section 13 (1), as I stand advised as on the date in the matter. That apart, even if it is found, that entering into the agreement also violates Section 13(1), even then the consequences have been provided in the act, and appropriate remedy is to be pursued before the competent authorities,

if permissible in the law, but then on that ground the defendant cannot contest the suit successfully.

Thus the appeal does not involve any subsequent question of law and the same is dismissed.

(N P GUPTA),J.

/Anil/